

Report to	North Wales Fire and Rescue Authority	
Date	16 October 2023	
Lead Officer	Helen MacArthur, Assistant Chief Fire Officer Finance and Resources	
Subject	Firefighters' Pension Scheme Wales – pension entitlement for retained firefighters	

PURPOSE OF REPORT

- 1 To provide an update to Members on the proposed amendments to the Firefighters' Pension Scheme in Wales to extend access for eligible retained (on-call) firefighters with pre-2000 service.

EXECUTIVE SUMMARY

- 2 The Welsh Government is current consulting on proposals to extend access to the Firefighters' Pension Scheme in Wales for eligible firefighters with pre-2000 service.
- 3 The proposals will extend the action taken during 2014 to address the less favourable treatment of part time workers. At that time, the Matthews judgment determined that the work of a retained firefighter was within scope of the Part Time Workers' Regulations (2000) (the Regulations) and allowed eligible members to purchase pension entitlement dating back to 1 July 2000.
- 4 A further successful legal challenge, the O'Brien judgment, confirmed that for those within scope their full service should be pensionable and not just the element following the date of the Regulations.
- 5 The Welsh Government in also seeking to correct a further error in that the original provisions should have allowed those with service from 7 April 2000 rather than 1 July 2000 to be within scope.

RECOMMENDATIONS

- 6 Members are asked to:
 - i) note the background to the legal matter; and
 - ii) note the proposals set out by the Welsh Government to address the legal issues arising.

BACKGROUND

- 7 For a number of years, access to the Firefighters' Pension Scheme was only available to firefighters employed on a wholetime basis. Specifically, on-call firefighters employed to work on the retained duty system were precluded from joining the pension scheme.
- 8 This arrangement did not change when the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (the Regulations) were introduced. The Regulations prohibit treating part-time workers less favourably than whole-time workers who are engaged in broadly similar work. At that time, it was held that the work of on-call firefighters was not sufficiently comparable. This view was overturned by the Matthews Judgment which found that the work was sufficiently comparable.
- 9 Consequently, on-call firefighters were permitted to join the Firefighters' Pension Scheme 2007 with effect from 7 April 2006. This provided parity for on-call and whole-time recruits from that point forward.
- 10 To correct the issue retrospectively, the Firefighters' Pension Scheme (Wales) Amendment Order 2014 created a modified scheme for on-call firefighters who were employed between 1 July 2000 and 6 April 2006. Known as the "2007 Modified Scheme" it provided benefits broadly similar to those received by whole-time firefighters.
- 11 The on-call firefighters in scope were permitted to join retrospectively by paying the pension contributions which would have been due had the unlawful treatment identified by the Matthews Judgment not arisen. This is known as the "1st choice exercise" and was conducted during 2015.
- 12 The application of a cut-off of date of 2000 was similar to the approach adopted by other part time workers and was subject to a legal challenge by a part time judge (O'Brien vs Ministry of Justice). The legal challenge argued that the full extent of service should be pensionable and not just the element that post dates the Part-time workers regulations. The O'Brien Judgment found in favour of the employee and it follows that the 1 July 2000 cut-off in the modified scheme is also unlawful and thus on-call firefighters with service on or after 7 April 2000 is potentially pensionable.

INFORMATION

- 13 Although this is a national issue, the responsibility for firefighter pensions is devolved in Wales and it falls to the Welsh Government to make the necessary arrangements to correct this matter. The Welsh Government is proposing that the existing provisions contained within the Modified Scheme be extended. For eligible individuals it is proposed to offer a second-choice exercise which will enable them to pay the pension contributions for all continuous service that pre-dates the 7 April 2000.

- 14 The Welsh Government has drafted the proposed amendments to the existing regulations and conducted a consultation that can be accessed at <https://www.gov.wales/pension-entitlements-retained-firefighters-2023>. The supporting document confirms the principles that will be applied to correct the matter.
- 15 The consultation closed on 6 October 2023 and the Authority's response to the consultation is set out in Appendix 1 which was approved by the Chair of the Local Pension Board and the Chair of the Authority. The responses confirm broad agreement with the principles set out and highlight some specific administrative areas for further consideration.
- 16 The consultation confirms that eligible individuals will include on-call firefighters whose:
- i. employment ceased between 7 April 2000 – 30 June 2000 and who were excluded from the first-choice exercise;
 - ii. employment straddles the operative date of 7 April 2000; or
 - iii. employment commenced after 1 July 2000 but were not afforded the full opportunity to purchase past service to which they were entitled.
- 17 Eligible individuals will be permitted to purchase past service pension by making contributions that would have become due. This will be a complex matter due to the longevity of some contracts and administrative records may not be available to confirm actual pensionable earnings. The draft regulations make provision for estimating pensionable pay in these circumstances.

IMPLICATIONS

Wellbeing Objectives	The pension arrangements promote long term stability in the workforce and the remedy addresses age discrimination.
Budget	The requirement to address this matter will impact financially on the Authority's financial position as pensions for those affected will be enhanced. The impact will be addressed via the valuation and setting of future employer contributions.
Legal	The Authority has a legal duty to address this matter and comply with the scheme regulations.
Staffing	Addressing the matter will support staff in their retirement planning and support wellbeing.
Equalities/ Human Rights/Welsh Language	The proposals address previous inequalities.
Risks and Uncertainties	This is a complex area which unknown financial consequences.

Consultation – Pension Entitlements for Retained Firefighters 2023

Consultation question 01

Do you agree with the eligibility criteria set out at paragraphs 12-17?

The criteria set out within paragraphs 12 – 17 of the consultation document appears reasonable for on-call staff conditioned on RDS contracts of employment.

Consultation Question 02

Do you agree that the proposed arrangements should include the option to purchase uninterrupted RDS service in the modified scheme between 31 March 2015 and 31 March 2022, irrespective of whether that is provided for through these provisions or separate regulations made under the PSPJO Act 2022?

This appears a reasonable and practical approach.

Consultation question 03

Do you agree with the assumption that we have proposed for historic service, pay and grade?

This is clearly a challenging area given the historical nature of this matter. The proposals provide a clear framework of options to be worked through and the suggested approach where records are not available provide a practical solution.

Consultation question 04

How far do you agree with our proposal to spread periodic contributions for post 2000 service over 10 years and for pre-2000 by 10 years plus half the length of pre-2000 service that they have opted to purchase?

The proposal is workable for the majority of cases although there will an administrative burden on the Scheme Manager. The proposals don't apply any form of de-minimis resulting in the risk that for small amounts the pay back period is overly generous.

Consultation question 05

Do you agree that the new options exercise should be completed within 18 months (with flexibility included to go beyond that in exceptional cases as described in paragraph 72).

The 18-month timeframe places an obligation on both the Scheme Manager and the eligible person to complete the process within prescribed timescales. In normal circumstances this would be achievable but as the practical implementation may coincide with remedying the age discrimination the burden on Scheme Managers will be need to be considered.

The timescales outlined within para 70 provide further information on the respective obligations of each party. It is considered that these would require strengthening to confirm the evidence that is required by each party in the event of dispute. For example, eligible members not notified by the FRA have 9 months from the date of legislation to declare their interest. However, it is not clear whether this specifically relates to members who may have moved without a forwarding address rather than those erroneously omitted due to the Scheme Manager's poor administration. Similarly, the duty of an individual to reply to the Scheme Manager within 6 months of receiving the relevant information is potentially fraught as it is not clear how the Scheme Manager can evidence that they have provided in the information in the event of dispute (this specific point being the subject of an IDRPs following the first-choice exercise).

Consultation question 06

How far do you agree that we should change the definitions of "firefighter" and of "pensionable pay" in the Compensation Scheme, to ensure that those firefighters who have second contracts are entitled to compensation on the same terms as those who do not?

This proposal is sensible and recognises the substance of the employment arrangements

Consultation question 07

We would like to know your views on the effects that the above proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

It is not evident the proposals have any specific impact on the Welsh language

Consultation question 08

Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No further comments

Consultation question 09

We have asked a number of specific questions. Do you have any other comments on our proposals or any related issues which we have not specifically addressed?

No comments to note